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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 008 51639 Office: CALIFORNIA SERVICE CENTER Date: APR 21 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a physician engaged in pediatric medical practice that wishes to employ the beneficiary as a medical services administrator. He endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position does not qualify as a specialty occupation. On appeal, the petitioner submits a brief asserting that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a medical services administrator. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: plan, organize, and coordinate the delivery of health care to patients verifying that appropriate medical services are given and refer to other physicians as necessary; organize the office and make sure that the office runs smoothly by developing policies and procedures to be compliant with applicable government regulations; assist in coordinating rehabilitation efforts and evaluations; maintain communication and provide appropriate follow-up with patients making sure that patients have appropriate check-ups and immunizations; obtain authorization for patients needing specialty consultations and special services; ensure proper billing and follow-up of payments; ensure on time delivery of vaccine and other office supplies; supervise patients' schedules; perform laboratory, pulmonary function testing; oversee medical staff to ensure testing is performed properly; maintain responsibility for facilities, services programs, staff budgets, relations with other organizations, and the entire operation of the facility including: marketing, finance, housekeeping, human resources, public relations, and information management; oversee financial management and budgetary guidelines; work with marketing, public relations, and planning departments to build and develop a positive image for the facility; and prepare for periodic inspections by government agencies, insurance companies, third-party payers. The petitioner requires a minimum of a bachelor's degree in management or a health related field for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position, though varied, are essentially those noted for medical and health services managers (office manager) in a small medical practice. The *Handbook* notes that physicians' offices and some other facilities may substitute on-the-job experience for formal education, and do not require a baccalaureate level education at all. The petitioner has, therefore, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner further asserts that the position's SVP rating, as set forth in the Department of Labor's *Dictionary of Occupational Titles (DOT)*, indicates that a baccalaureate degree or higher is normally required for entry into the proffered position. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require. The petitioner's contention in this regard is unpersuasive.

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations. In support of that assertion the petitioner submitted an opinion letter from Dr. [REDACTED], Professor of Management at the University of Georgia. Dr. [REDACTED] states that, in his opinion, the proffered position is a specialty occupation and would most appropriately be filled by an individual with a minimum of a Bachelor of Business Administration degree in Management or an individual with a medical degree and experience. He further indicates that his opinion is not based simply upon the technical requirements of the degree, but on the skills needed to function in a management position. This opinion is based on the opinion writer's "21 years of experience as a professor in the management, organizational behavior and leadership areas." Dr. [REDACTED] does not cite any industry study, survey, or documentation from the Department of Labor or any other authoritative source of labor market information to corroborate his statements. Simply going on the record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The opinion will, therefore, be given little weight as it is contrary to statements in the *Handbook* indicating that physician's offices routinely substitute on-the-job experience for formal education in similar positions. The petitioner has not established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner states that it has, in the past, hired medical services administrators with medical degrees and medical practice experience, and that as a result it satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The petitioner did not, however, provide any documentary evidence to substantiate this assertion such as copies of the past employees' degrees or employment records. Once again, simply going on the record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into

the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id* at 388. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) has not been established.

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties are routinely performed by health services managers (office managers) in physician's offices who do not have a baccalaureate level education in a specific specialty, and by individuals lacking a baccalaureate level education in any field. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.